



IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 1749/2002

PETITIONER

: Rajeshwar Namdeo
S/o S.L. Namdeo,
aged about 44 years,
R/o MIG-II/4, Nutan Enclave,
Nutan Chowk, Sarkanda-Bilaspur,
Distt. Bilaspur (CG).

VERSUS

RESPONDENTS

- 1) Bilaspur Development Authority
Through Chief Development
Officer,
Bilaspur Development Authority,
Vyapar Vihar, Bilaspur (CG).
- 2) The Assistant Engineer,
Technical Encharge,
Nutan Enclave, Nutan Colony,
C/o Bilaspur Development
Authority, Vyapar Vihar,
Bilaspur, Distt. Bilaspur.
- (3) Municipal Corporation Bilaspur through its
Commission Municipal Corporation Bilaspur.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF

INDIA

Filed
26/4/03
12/5/02
Amendment incorporated
25/4/03
S. Rama
Adv
25/4/03
P.R. No.
Presented by Shri. Anup Kumar
dated
26/4/03

10

13/12/2004. *Asst. Dir.*

Amendment / order
as per rule
28/12/04

(4) **Pramod Kumar Choudhary;**
S/o. J.L. Choudhary;
aged about 31 years, S/o.
Su. No. 10, Nandan Colony
Barkanda, Haldwari (C.O.).

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No. 1749 of 2002

Rajeshwar Namdeo

- Versus -

Bilaspur Development Authority and three others

POST FOR ORDER ON 10TH FEBRUARY, 2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1749 of 2002

Rajeshwar Namdeo

- Versus -

Bilaspur Development Authority and three others

Present: -

Shri P. Diwaker, Sr. Advocate with Shri S.L. Namdeo
and Shri Yatindranath Mishra, Advocates:

For the petitioner.

Shri M.D. Sharma, Advocate:

For respondents No.1 to 3.

Shri Kanak Tiwari, Sr. Advocate with
Shri Prateek Sharma, Advocate:

For respondent No. 4.

ORDER

(Passed on 10th February, 2005)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged the order dated 22.7.2002, whereby respondent No.2 asked the petitioner to vacate the house No.MIG-2/4 within two days, otherwise, the Bilaspur Development Authority (BDA) will remove the illegal possession of the petitioner from the house.
2. Brief facts leading to filing of this writ petition are that respondents No.1 and 2 vide notification Annexure A-1 dated 1st September, 1998, invited applications from the intending buyers for sale of three types of flats, among them there was one MIG-2 category at the cost of Rs.3,65,000/-. In the said notification, it was made clear that 'FIRST COME FIRST GET' principle will be applied. In pursuance of that notification, the petitioner herein applied for the house, apart from the petitioner ten other persons also applied for the house, and list (Annexures A-4 & A-5) in order of priority was prepared by the BDA in which the petitioner was registered at Serial No.1. First of all the petitioner deposited money on 4.9.1998 and he also deposited the entire money within the stipulated time. A

tripartite agreement was also executed between the petitioner, the BDA, and the Bank on 10.11.1999 under which a loan of Rs.2,50,000/- was sanctioned and the petitioner deposited that amount with the BDA. Thereafter, vide letter dated 27.2.2001 (Annexure A-3), the petitioner was asked to remain present on the site on 15.3.2001 at 3 p.m. for selecting the flat. Ultimately, vide letter dated 25.10.2001 (Annexure A-10), the petitioner was informed by the respondent Authority to come along with stamps of Rs.24,700/- and registration fees of Rs.9,300/- for execution of sale deed in favour of the petitioner. In response to that letter, the petitioner purchased stamps (Annexure A-11), however, vide letter dated 27.10.2001 (Annexure R-1), the petitioner was informed by the Estate Officer of respondent Authority that one Pramod Kumar Choudhary has filed Civil Suit No.76-A/2001 in the Court of 5th Civil Judge, Class-I, Bilaspur, with respect to flat No.MIG-2/4 in which he has obtained the stay order, therefore, it is not in accordance with law to allot this flat to the petitioner and it was further made clear that the earlier letter dated 25.10.2001 was issued under a mistake. Vide letter dated 30th October, 2001, the Estate Officer narrating the same ground cancelled the allotment in favour of the petitioner.

3. In this connection, respondent No.4 herein namely, Pramod Kumar Choudhary, filed a civil suit before the 5th Civil Judge, Class-II, Bilaspur, in respect of flat No.MIG-2/4, and on 21st March, 2001, the learned Civil Judge passed order for maintaining the status quo until further orders. In that suit, the wife of the petitioner herein was made party, who did not appear in the suit on the ground that she is not the allottee of flat No.MIG-2/4. However, the petitioner herein filed an application under Order I Rule 10 of the Civil Procedure Code for adding him as party in the suit and that application was allowed on 12.12.2001, but as per the argument of learned Senior Counsel for the petitioner in pursuance of Court's order, respondent No.4 has not amended the plaint so far. The status quo order was continued and the last order was passed on 27th July, 2001, in which it was mentioned that the stay order will continue till the

next date of hearing. However, thereafter, neither the stay order was extended nor any other order was passed in respect of stay.

4. The case of respondent No.4 herein before the Civil Judge is that one Smt. Usha Pandey applied for the house in response to the notice dated 1.9.1998, she deposited Rs.30,000/- on 4.9.1998, she was registered at Serial No.4, later on, that registration was transferred in favour of respondent No.4 herein and the amount was deposited by respondent No.4 herein. A tripartite agreement was executed between respondent No.4, the Co-operative Bank and the respondent BDA, and a loan of Rs.2,50,000/- was advanced and the same was deposited with the BDA. In that tripartite agreement it was specifically mentioned that this loan is sanctioned against house No.MIG-2/4. On 27.2.2001 a letter was issued to respondent No.4 herein also showing his priority number at serial 10 and asking him to come on 15.3.2001 for selection of flat. However, later on, he was informed that the flat in question has been allotted to the wife of the petitioner herein. Therefore, respondent No.4 issued the notice and filed civil suit for declaration and permanent injunction.
5. In this connection, it is not out of place to mention here that in all eight flats of MIG-2 category were constructed, whereas, there were eleven applicants. In this connection, when Smt. Ranu Trivedi, who was at Serial No.11, came to know about the allotment of the flat, she filed Writ Petition No.438/2001 (Annexure A-6) before this Court for allotment of house in her favour, in which return was filed on behalf of the BDA and the BDA in reply submitted that it is true that the respondent BDA advertised the floated scheme under Annexure R-1 for eight flats of MIG-2 category and the cost of same was fixed at Rs.3,65,000/-, in response to the same some persons deposited the amount, the list Annexure R-2 was prepared, and ultimately, eleven persons deposited the amount in which Smt. Ranu Trivedi was at Serial No.11. Therefore, it was specifically mentioned in para 9 of the reply that she was not entitled for allotment, eight persons namely, R.L. Namdeo, G. Sujata, Smt. Seema Shukla/Rajesh Shukla, Alfaran F. Ahemad, Lakshmi Vahinipathi/Upendra

Vahinipathi, Jai Prakash Pathak, Nazima Beg/Savita Pathak, and Rajesh Dighraskar, have deposited the amount, they are the first eight persons, who are entitled for house. However, since one another duplex MIG-2 house was available, therefore, under the Court order dated 19.10.2001, the BDA allotted that flat to Smt. Ranu Trivedi. Accordingly, that writ petition was disposed of, stay was vacated and the BDA was directed to take appropriate steps for allotment of remaining flats as the Deepavali festival was fast approaching, so that the allottees can celebrate the Deepavali festival in their new flats. Thereafter, the process of allotment was initiated and out of the first eight persons, except the petitioner, other seven persons were allotted the flats, and even registration of documents has also been executed in their favour. After allotment of houses to other applicants as per priority only one flat i.e. MIG-2/4 has been left out. The petitioner being the first person registered at serial No.1 was entitled for house in 'FIRST COME FIRST GET' principle. However, registry in respect of house No.MIG-2/4 has not been executed in his favour on account of filing of suit by respondent No.4 herein.

6. The facts narrated by the petitioner herein have been admitted by the BDA in its return in the writ petition filed by Smt. Ranu Trivedi as also in the reply filed in civil suit filed by respondent No.4 herein in which they have admitted that the petitioner's priority is at serial No.1. Respondent No.4 herein stepped in the shoes of Smt. Usha Pandey and he was shown at serial No.10. It is admitted position that respondent No.4 has also deposited the whole amount and a tripartite agreement has already been executed in his favour on 21.8.2000, in which the disputed flat has been shown and the loan has been sanctioned to respondent No.4 against that flat and that amount was deposited with the BDA. All the above documents were referred by learned counsel for the respective parties, during the course of arguments.

7. Having heard learned counsel for the parties, I have perused the whole record. It is admitted position that respondent No.4 has filed a civil suit before the Civil Judge in respect of the same house in which the

application of the petitioner herein has been allowed for adding him as a defendant. Respondent No.4 herein was substituted in place of Smt. Usha Pandey, whose earlier registration number was at serial No.4. However, respondent No.4 was shifted to serial No.10 by the BDA Officers. Tripartite agreement in respect of the disputed house has also been executed in favour of respondent No.4, and a tripartite agreement was also executed between the petitioner, the BDA, and the Bank on 10.11.1999 in which the number of flat has not been mentioned, whereas, in the case of respondent No.4, flat No.4 has been mentioned. It is not clear whether at the time of execution of tripartite agreement it was necessary to mention the flat number or it was done only in case of respondent No.4 and why not in case of the petitioner who was at serial No.1. Another question is that whether flats were allotted to the purchasers according to serial number of flat vis-à-vis serial number of purchaser or they were allowed to select any flat out of the eight flats irrespective of their priority number and flat number. Therefore, it is a matter of evidence and disputed facts are involved in this matter. It is true that the petitioner always remained at serial No.1 and as per the notification he was entitled for the house out of eight houses as the first person. If respondent No.4 is treated as serial No.10, then he is not entitled for any flat out of the eight constructed flats, but he was replaced in place of Smt. Usha Pandey whose original number was 4, therefore, it becomes the matter of evidence to sort out these complicated questions and civil suit has already been filed. Moreover, this is a contractual matter and the petitioner herein and respondent No.4 herein want to enforce their contract against the BDA and that can be sorted out in a civil suit.

8. Since the case of the petitioner is that under the oral directions he was given possession of the house on 26.10.2001 and since then he is in possession and vide letter dated 25.10.2001 he was asked to bring the stamps, he brought the stamps also, all these facts can be proved by evidence whether the petitioner was allowed to take possession under the oral directions.

9. Therefore, in the circumstances, I am of the considered view that proper remedy for the petitioner is to approach the civil Court and pursue his remedy under the ordinary civil law.
10. Learned Senior Counsel for the petitioner submitted that respondent No.4 herein is not pursuing his civil suit, the same is lying without any progress and even after the Court order so far the petitioner has not amended his plaint. If it is so, then the petitioner can move that Court for passing appropriate order regarding rejection of the plaint or otherwise for not complying with the Court order. Since the petitioner and respondent No.4 are fighting since 2001, and thereby more than 4 $\frac{1}{2}$ years have elapsed, whereas, both of them have deposited the full amount with the BDA and this whole chaos has been created by the Officers of BDA, in order to decide the dispute as early as possible, the trial Court is directed to expedite the trial of the civil suit and decide the same within six months from the date of receipt of a copy of this order. It is expected that all the parties will co-operate and assist the Court, and file their documents and adduce their evidence as per the Court direction at the earliest, so that the suit is disposed of at the earliest.
11. In the result, the petitioner's writ petition is not maintainable, as discussed above, and the same is dismissed. However, since the petitioner is in possession, therefore, one-month time from today is allowed to approach the civil Court and obtain appropriate order. Till the expiry of one-month time from today, the respondent BDA shall not disturb the petitioner's possession.

Sd/-
L.C. Bhadoo
Judge

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19/12/05